IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2226 of 2002

to

FIRST APPEALNo 2239 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORE GOVAJI ISHWARJI

Versus

SPECIAL LAQ OFFICER

Appearance:

1. First Appeal No. 2226 of 2002

MR JM PATEL for MR AJ PATEL for Petitioners
MR AD OZA, GP in FA Nos. 2226 to 2233 of 2002 and
MR SIRAJ GORI, AGP in FA Nos. 2234 to 2239 of 2002
for Respondents.

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/10/2003

ORAL COMMON JUDGEMENT
(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. This group of appeals is filed against the award made by the Reference Court i.e. Extra Assistant Judge, Mehsana dated 16th August, 2001 in the Land Acquisition Reference Cases Nos. 34 of 1995 to 47 of 1995.

2. The appellants are the original claimants/owners of the agricultural lands situated at village Daran, Taluka Kadi, District Mehsana. Since their lands were required for the implementation of public purpose, namely construction of Narmada project, at the instance of Executive Engineer, Construction Division, Kadi, who is respondent no. 2 herein, respondent no. 1 initiated the acquisition proceedings under the provisions of the Land Acquisition Act, 1894 (for short 'the Act'). Section 4 notification was published on 1st August, 1991 followed by notification u/S. 6 of the Act dated 30th July, 1992. On completion of all the formalities required to be observed under the provisions of the Act, respondent no. 2 calculated the compensation to be paid to the claimants at Rs.3-30 paise per sq. mtr. against the claim of the appellants at Rs.30/= per sq. mtr.

2.1. The dissatisfied claimants approached the Reference Court by filing reference cases u/S. 18 of the Act. The learned Extra Assistant Judge, Mehsana, after considering the material placed before him in the form of oral evidence as well as documentary evidence, came to the conclusion that the award made by the Special Land Acquisition Officer was hopelessly inadequate and it was required to be enhanced substantially. The learned Judge, therefore, increased the compensation by Rs.23=30 paise per sq. mtr. i.e. inall Rs.26=60 paise per sq. mtr. Over and above that, the learned Judge also granted benefits u/S. 23 (1-A) and 23 (2) of the Act. The learned Judge, however, declined to grant interest on the monetary benefit awarded under the aforesaid sections in view of the judgment delivered in the case of Special Land Acquisition Officer, Bharuch v/s. Jagdishbhai reported in 1997 (2) GLH (UJ 17-27).

3. The appellants in these appeals have claimed increase of additional Re.1/= and also interest which has

been specifically denied by the Reference Court as per the direction contained in sub-para. (6) of para. 21 of its judgment.

4. We have heard Mr. J.M. Patel, learned advocate appearing for Mr. A.J. Patel for the appellants and Mr. A.D. Oza, Ld. GP and Mr. Siraj Gori, Ld. AGP for the respondents. Mr. Patel has drawn our attention to the judgment dated 31/07/2003 rendered by the Division Bench of this Court in First Appeal Nos. 2289 to 2306 of 2002 and in particular to para. 3 of the said judgment. The contents of the said para. makes it clear that Mr. A.J. Patel, learned counsel appearing for the appellants of those appeals, had given up the claim for enhanced compensation in view of several judgments delivered by this Court in other matters. Similarly in the present case Mr. J.M. Patel gives up his claim for the enhanced compensation. Mr. Patel, however, submits that the direction contained in sub-para. (6) of para. 21 of the trial Court's judgment is erroneous and it is required to be set aside in view of the decision of the Apex Court rendered in the case of Sunder v/s. Union of India reported in 2001 (3) G.L.H. p.446. The Apex Court in the said decision has explained the grant of benefits which can be awarded u/S. 23 (1-A) of the Act as well as the grant of interest on such amount as the said amount forms part of the award itself. The Apex Court has clarified the position further by saying that -

> "We make it clear that the compensation awarded include not only the total sum arrived at as per subsection (1) of S.23 but the remaining subsections thereof as well. It is thus clear from S.34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in S. 23 including all the subsections thereof."

5. In view of the aforesaid ratio laid down by the Apex Court, this direction of the Reference Court is obviously erroneous and it is required to be quashed and set aside. We, therefore, quash and set aside the said direction, and order that the respondents shall pay interest in accordance with section 28 of the Act on the monetary benefits made available to the appellants under the provisions of section 23(2) and 23(1-A) of the Act.

The net result is that the appeals are partly allowed with no orders as to costs.

R & P, if any, be sent back to the trial Court

immediately.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.